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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,130	10/27/2003	William Michael Glandorf	6373R2RD2	3261

27752 7590 01/21/2005

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EXAMINER	
KRASS, FREDERICK F	
ART UNIT	**PAPER NUMBER**
1614	

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/694,130	GLANDORF ET AL.	
	Examiner	Art Unit	
	Frederick F. Krass	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Obviousness Rejection

Claims 1-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gaffar et al (USP 4,627,977) in view of Crisanti et al (USP 4,902,497).

This action is maintained.

Applicant argues that there is no disclosure in the primary reference of using stannous ion sources other than stannous fluoride. This is of course true, but the argument is not persuasive since the rejection is predicated on a combination of references, not the primary reference alone.

Applicant also argues that the primary reference is distinguished from the instant claims insofar as it uses a higher concentration of water; Applicant points to working example two of the patent as exemplifying a composition having 35.578 percent water. But, for the purposes of determining patentability a reference is considered for the entirety of what it fairly teaches; it is not limited to its preferred embodiments. Working example 2 exemplifies a toothpaste. Gaffar et al clearly teach, however, that other dentrifices such as clear gels may contain much lower amounts of water, i.e. as low as three percent (col. 5, line 58). The instant claims are not limited to toothpastes.

Applicant further argues that the instant invention does not require the synthetic linear polycarboxylate required the primary reference, which the latter uses to inhibit hydrolysis. This argument is irrelevant to the instant claims which employ the open-ended transitional phrase "comprising", permitting the inclusion of any and all additional components.

Regarding the secondary reference, it is argued that insufficient motivation is provided by the prior art to add the stannous/acid complexes of the secondary reference to the primary reference compositions. It is noted that Applicant apparently agrees with the assertion made by the examiner that Crisanti et al teach that such complexes provide sustained activity over extended periods of time. (Remarks, page 7, first full paragraph on the page).

That was the motivation provided by the examiner in the previous office action, and that alone should be sufficient. Even absent that motivation, however, the combination would be obvious in

accordance with well-established precedent. It is generally obvious to combine two compositions, each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. In re Kerkhoven, 205 USPQ. 1069 (C.C.P.A. 1980). The idea for combining said compositions flows logically from their having been individually taught in the prior art. In re Crockett, 126 USPQ 186, 188 (C.C.P.A. 1960). Moreover, picking and choosing individual components even from several references, each of which discloses a plurality of components, is permissible where each component has the same individual utility. In re Dial, 326 F.2d 430, 432 (C.C.P.A. 1964). (Holding that it would have been obvious to have combined four individual stabilizers from three different references, absent evidence in the record that Applicant's particular combination of stabilizers was more effective at inhibiting decomposition than any single member of that combination). The fact that a single agent might be sufficient on its own (essentially the argument advanced by Applicant at the second full paragraph of page 7 of the response) does not negate such obviousness. To have combined two known anticalculus agents into a single dentrifice composition would certainly have been obvious in accordance with the reasoning of such case law.

The statement made at the third full paragraph of page 7 of Applicant's response that neither the primary nor secondary reference teach that "a molar ratio of polyphosphate anion to stannous ion of from about 0.2:1 to about 5:1 must be present" is similarly not persuasive. The examiner explained why this ratio would have been obvious: see the passage spanning the bottom of page 4 to the top of page 5 of the previous office action. Applicant did not refute this assertion, nor provide any evidence of unexpected results for this particular ratio. It is not necessary for the prior art to state that a given claimed feature "must" be present. All that is required is that the feature be fairly suggested, which in this case it is.

Action is Final

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick F. Krass whose telephone number is 571-272-0580. The examiner's schedule is as follows:

Monday: 10:30AM- 7PM;
Tuesday: 10:30AM - 7PM;
Wednesday: off;
Thursday: 10:30AM- 7PM; and
Friday: 10:30AM-7PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached at 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frederick Krass
Primary Examiner
Art Unit 1614